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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,318	06/25/2003	Beng Sim Chuah	J3676(C)	3089

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EXAMINER

VANIK, DAVID L

ART UNIT PAPER NUMBER

1615

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/603,318	Applicant(s) CHUAH ET AL.	
	Examiner David L. Vanik	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.  
4a) Of the above claim(s) 36-43 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-35 and 44 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/2/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Receipt is acknowledged of applicant's Amended Claims filed on 8/4/2005.

As a result of the amendment to the instant Claim 1, the 35 USC §103 rejection over US 6,403,070 in view of US 5,221,534 is hereby **withdrawn**. In addition, the 35 USC §103 rejection over US 5,221,534 in view of US 5,750,096 is hereby **withdrawn**.

### *Election/Restrictions*

Applicant's election with traverse of Claims 1-35 in the reply filed on 8/4/2005 is acknowledged. The traversal is on the ground(s) that examining the composition of claim 1 and method of claim 44 does not present the examiner with a search burden. Since the instant claim 1 requires the presence of a particulate antiperspirant active, the examiner finds this reasoning persuasive. As such, the restriction requirement has been removed with respect to the method claim 44. Since the traversal of Groups II-III has been withdrawn, claims 36-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species and invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/4/2005. The requirement is still deemed proper and is therefore made FINAL.

## NEW REJECTIONS

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-35 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,403,070 B1 ('070) in view of US Patent US 6,485,716 ('716).

'070 teach a deodorant composition comprising a deodorant active agent, such as aluminum or zirconium salts (column 2, lines 30-34), mineral oil (column 3, line 11), and di or triblock copolymers, wherein at least one block copolymer comprises at least one segment derived from styrene (abstract and Examples 1 - 2). The composition advanced by '070 can further comprise a variety of other waxes, such as paraffin

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waxes and microcrystalline waxes (column 5, lines 40-52). The “structurant system,” comprised of wax and di or triblock copolymers, can be in a concentration ranging from 1 – 20% (column 3, lines 2-6). The deodorant active can be in a concentration ranging from 0.1% to 40% and the mineral oil from about 5 – 90% (column 5, lines 26 – 39). According to '070, the deodorant-based composition can be applied to the skin and used in a method for treating body odor (Claims 46-48). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.

Although '070 teaches a composition comprising fatty acid esters, such as isopropyl myristate and isopropyl palmitate, '070 does not teach aromatic ester oil in their deodorant composition.

However, '716 teach the advantages of adding aromatic ester oil, such as Finsolv™, to an antiperspirant-based composition (abstract, column 3, lines 47-53, and column 8, lines 23-42). Since the antiperspirant advanced by '716 is a gel-based composition, it is the examiner's position that it is a semi-solid. According to '716, Finsolv™ can be advantageously used as an emollient in an antiperspirant. Specifically, emollients, such as Finsolv™ or isopropyl myristate, help to sooth the skin and can help to maintain a soft, smooth, and pliable skin appearance (column 8, lines 53-60; column 3, lines 47-53; column 9, lines 23-43). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings

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of '070 with '716 and produce a deodorant composition comprising a benzoate ester or Finsolv™. The person of ordinary skill in the art at the time the invention was made would have been motivated to add aromatic ester oil to the deodorant composition advanced by '070 in order to produce a composition capable of maintaining soft, smooth, and pliable skin. Based on the teachings of '070 and '716, it is expected that the addition of aromatic ester oil to a gel-based deodorant would render a composition capable of maintaining soft, smooth, and pliable skin.

It should be noted that the use of the instant composition for modifying "syneresis" is considered to be a future intended use of the composition and, as such, is given no patentable weight.

Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,221,534 ('534) in view of US Patent 6,403,070 B1 ('070) and further in view of US Patent 5,750,096 A ('096).

'534 teach a composition comprising hydrocarbon oils and mineral oils (column 6, lines 24-33), alkylene/arlene diblock and triblock polymers (Table 1, column 2, lines 34-46, and column 6, lines 24-33), and an aromatic ester oil, such as benzoate ester or Finsolv™ (column 6, lines 34-44). The composition advanced by '534 can be used as an anti-perspirant (column 7, line 6). The "structurant system," comprised of wax and di or triblock copolymers, can be in a concentration ranging from 1 – 20% (column 6, lines 34-36). Furthermore, according to '534, the proportion of chemicals can be

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altered based on the desire to produce a fragile, flexible, transparent, translucent or opaque gel (column 6, lines 45-53). It is the examiner's position that modifying and optimizing the proportion of chemical components, based on the particular application, without adversely affecting the skin is within the scope of the skilled artisan. In short, one of ordinary skill in the art at the time the invention was made would have the ability to refine and optimize the composition.

'534 does not teach a anti-perspirant composition comprising an organic wax. However, '070 teach the advantage of adding an organic wax, such as microcrystalline wax, to a gel-based deodorant composition (column 5, lines 40-52). According to '070, organic waxes, such as microcrystalline wax, can advantageously modify the consistency of deodorant compositions (column 5, lines 40-52). Because organic waxes can advantageously modulate consistency of deodorant compositions, one of ordinary skill in the art would have been motivated to add an organic wax, such as microcrystalline cellulose, to the composition proposed by '534. Based on the teachings of '070, there is a reasonable expectation that the addition of an organic wax to a deodorant-based composition would effectively modulate the consistency of said composition. As such, it would have been obvious to one of ordinary skill in the art at the time the invention was made add an organic wax to the invention advanced by '534 in view of the teachings of '070.

'534 does not teach a composition comprising a particulate antiperspirant active. However, '096 teach a composition comprising from about 0.5 – 60% of an antiperspirant active in the form of particulate solids (column 8, lines 52-65). According

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to '096, salts of aluminum and zirconium are preferred antiperspirant actives (column 9, lines 9-14). In addition, according to '096, a composition comprising antiperspirant particles of less than 100 $\mu$ m provides a relatively low amount of visible residue performance. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was to combine the teachings of '534 with '096 and produce a deodorant composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, particulate deodorant active agents, and an aromatic ester oil, such as benzoate ester or Finsolv<sup>TM</sup>. The person of ordinary skill in the art would have been motivated to add particulate deodorant active agents to the deodorant composition advanced by '534 because a composition comprising antiperspirant particles of less than 100 $\mu$ m provides a relatively low amount of visible residue. Based on the teachings of '096 and '534, it is expected that the addition of antiperspirant particles to a composition comprising hydrocarbon oils, mineral oils, alkylene/arlene diblock and triblock polymers, and aromatic ester oils would result in an effective deodorant with a relatively low amount of visible residue performance. Based on the teachings of '096, it is also expected that salts of aluminum and zirconium would be effective antiperspirant actives.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within



TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Vanik whose telephone number is (571) 272-3104. The examiner can normally be reached on Monday-Friday 8:30 AM - 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David Vanik, Ph.D.  
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THURMAN K. PAGE, M.A., J.D.  
SUPERVISORY PATENT EXAMINER

